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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,170	01/14/2004	Rhonda Schrader	35049-95382	3547
23644	7590	05/22/2006	EXAMINER	
BARNES & THORNBURG, LLP			PRINCE, FRED G	
P.O. BOX 2786			ART UNIT	
CHICAGO, IL 60690-2786			PAPER NUMBER	

1724  
DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/757,170

Applicant(s)

SCHRADER, RHONDA

Examiner

Fred Prince

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant now claims "a generally horizontal" receptacle. It is respectfully submitted that the specification does not describe "a generally horizontal" receptacle but clearly describes a receptacle having a slope.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what applicant means by reciting "a generally horizontal" receptacle since the specification clearly and repeatedly refers to the receptacle as having a slope. For examination purposes "generally horizontal" will be considered by the examiner to mean that the receptacle is not exactly vertical in orientation.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 7-9, 16-18, 22-25, 28 and 29 are again rejected under 35 U.S.C. 102(b) as being anticipated by Trail (US Pat No 4,181,612).

Trail teaches an apparatus (Figs. 1-2) for servicing a bird cage comprising an animal enclosure comprising a bird cage (4) that has a permeable floor (12), a hopper (10) configured to permit draining of water, an inherent animal support (68), the “generally horizontal” receptacle having an edge (1. at the top of trough 10, 2. where trough 10 and tube 14 meet, and 3. the bottom of tube 14) and defining a cavity permitting passage therethrough of the water and waste from the enclosure, a filtration unit (16), a pump (18) delivering water from the filtration unit (16) back to the receptacle (10) to permit circulation water (see Figures 1 & 2 and column 3 line 48-column 4 line 53), the water inherently containing a “fragrance” as it contains ammonia and other aromatic chemicals.

Per claims 9, 23 and 25, it is noted that applicant recites generic “support”. It is submitted that the grid (68) is a generic “support”.

3. Claims 1-3, 7-9, 11-12, 16-18, 22-25 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bunger (US Pat No 4,424,129).

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Bunger teaches a system comprising a "generally horizontal" tray (10) has an animal support means that has a permeable floor (col. 3, lines 1-10), a hopper (13) configured to permit draining of water, the "generally horizontal" receptacle having an edge (Fig. 1) and defining a cavity permitting passage therethrough of the water and waste from the enclosure, a filtration unit (18), a pump (16) delivering water from the filtration unit back to the receptacle to permit continuous circulation water (Fig. 1), the system further including bacteria for contaminant degradation (col. 5, lines 17-22), the water inherently containing a "fragrance" as it contains ammonia and other aromatic chemicals.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10-15, 19-21, 26-27 and 30 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Trail.

Trail is described above. Trail further discloses that the filtration unit further comprises a screen (28), and carbon filter (32; col. 4, lines 5-7), wherein the filter

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supports bacteria enhancing biological treatment (col. 4, lines 43-48). Trail fails to disclose an additional porous filter layer.

It would have been readily obvious to the skilled artisan to provide the a filter with an additional porous layer in order to provide additional treatment to the water.

Per claims 13-14, 19-20, 26 and 30 Trail do not disclose a UV sterilization unit.

It would have been obvious for the skilled artisan to have added a UV sterilization unit to the system of Trail in order to provide additional treatment to the water treated in the system.

Per claims 15, 21, 27 and 30, Trail do not disclose an automatic shut-off control the pump.

It is well within the purview of the skilled artisan to use a float to automatically control a pump, in order to, for example, control the level of fluid in a receptacle (see, for example, US Pat No 4,338,337 to Frankl).

6. Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Trail in view of Niki (US Pat No 4,448,152).

Trail is described above. Trail does not disclose a tray comprising three sides and the slope of the tray adjustable by screws.

In any case, Niki discloses providing a waste system with a tray (4) comprising three sides (col. 2, lines 25-29) in order to, for example, direct filth away from animals depositing the filth.

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It would have been readily obvious for the skilled artisan to modify the system of Trail such that it includes a tray comprising three sides in order to, for example, direct filth away from animals depositing the filth.

Per claim 6, Niki also discloses that the slope of each tray is adjusting depending on the type of apparatus and the results desired (col. 3, lines 52-60). Regarding the tray being adjustable by screws, it is submitted that it is well known in the art to adjust a tray by utilizing screws in order to, for example, easily adjust the slope of the tray (see, for example, US Pat No 2,565,992 to Rosenfelder). Accordingly, it would have been readily obvious for the skilled artisan to modify the tray of Trail, as modified by Niki, such that it includes for screws for adjusting the height of the tray in order to, for example, easily adjust the slope of the tray, as known in the art.

### ***Response to Arguments***

Applicant's arguments filed April 13, 2006 have been fully considered but they are not persuasive. Applicant argues that Trails does not teach a generally horizontal receptacle with a cavity having an edge permitting passage of liquid. The examiner disagrees. Trail clearly shows in Fig. 1 a receptacle creating an edge where the trough and tube meet. Trail further discloses terminal edge at the top of the trough and a terminal edge at the bottom of the tube 14 of Trail. Accordingly, whether applicant's scope is merely an edge, as claimed, or a terminal edge, which is clearly not claimed, the system taught by Trail is well within the scope of the claim. In reciting "a generally horizontal" receptacle, it appears that applicant is driving at some narrow, unexplained

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definition of the receptacle receiving the liquid and the waste. It is submitted that, as best understood, the receptacle of Trail is "generally horizontal" since it slopes as applicant's receptacle slopes and it is not exactly vertical as applicant's receptacle is not exactly vertical. Accordingly, the recitation that the receptacle is "generally horizontal" fails to patentably distinguish the instant invention over the prior art.

Applicant argues that Trail does not disclose that a constant body of liquid drains the waste material. First, it is noted that constant flow of liquid is clearly a process limitation that fails to add any structure to the system claimed and is, rather, merely functional language. Second, it is noted that a pump is capable of being operated continuously by simply not turning off said pump. Third, it is noted that applicant does not claim a constant body of liquid drains the waste material. Accordingly, as applicant is arguing a limitation not claimed and for the reasons provide above, applicant's invention is not patentably distinguished over the prior art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).




**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Fred Prince  
Primary Examiner  
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